

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**





77-1235

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA, APPELLEE

vs.

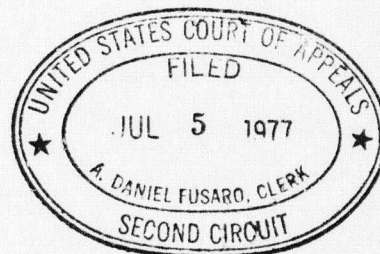
EDWARD COLLINS, APPELLANT

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On Appeal from United States District Court  
for the District of Vermont

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BRIEF FOR THE APPELLANT



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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

|                                      |   |                    |
|--------------------------------------|---|--------------------|
| UNITED STATES OF AMERICA, APPELLEE : | : |                    |
|                                      | : |                    |
| vs.                                  | : | Docket No. 77-1235 |
|                                      | : |                    |
| EDWARD COLLINS, APPELLANT            | : |                    |

BRIEF FOR DEFENDANT-APPELLANT

STATEMENT OF THE CASE

This is a criminal action tried in the United States District Court for the District of Vermont, Honorable Chief Judge James S. Holden presiding. Appellant was indicted on December 16, 1976 for violations of the laws of the United States of America stated in four counts. Count I charged the appellant, Edward Collins, violated Title 18, U.S.C. 2312, 2, in unlawfully, willfully, and knowingly transporting a 1963 Cadillac motor vehicle in interstate commerce, knowing the same to be stolen. Count IV charged the appellant, Edward Collins, with violation of Title 18, U.S.C. 2313 in unlawfully, willfully, and knowingly receiving a 1967 Austin-Healy motor vehicle which was part of interstate commerce, and which he knew to have

been stolen. Count V charged the appellant, Edward Collins, with violation of Title 18, U.S.C. 2312, 2, in unlawfully, willfully, and knowingly transporting in interstate commerce a 1966 Austin-Healy, knowing the same to be stolen. Count VI charged the appellant, Edward Collins, did conspire with co-defendants, George Fitch, David Kotlarowski, and Michael Jean Peters to violate the provisions of Title 18, U.S.C. 2312 and 2313. Counts II and III of the indictment related to other defendants.

The case went to trial as to Defendant-Appellant, Edward Collins, and as to co-defendant, Michael Jean Peters, on the 28th day of February, 1977. Co-defendants, George Fitch and David Kotlarowski, entered guilty pleas pursuant to plea bargain. Trial of Edward Collins and Michael Jean Peters resulted in conviction of Appellant, Edward Collins, on all four counts, and conviction of co-defendant, Michael Jean Peters, also on all four counts.

#### STATEMENT OF ISSUES

The following are the questions raised on appeal by the Defendant-Appellant, Edward Collins:

1. Did the District Court err in permitting the admission into evidence of prejudicial facts and circumstances surrounding an unrelated offense brought in state



court and later dismissed prior to trial on the merits in the federal case, which is the subject of this appeal?

2. Did the District Court err in denying Defendant-Appellant, Collins', motion for judgment of acquittal, or, in the alternative, for a new trial?

STATEMENT OF FACTS RELEVANT  
TO ISSUE NUMBER ONE

Defendant-Appellant, Edward Collins, was tried before the United States District Court for Dyer Act violations involving the transportation across state lines of stolen automobiles, and the receiving of stolen automobiles.

During the course of the trial, the government brought out an alleged admission made by Defendant, Collins, to Chief Pratt, of the Wilmington Police Department. It appears from the record that the alleged admission was made concerning the alleged Dyer Act offenses at a time when Chief Pratt was interrogating Defendant, Collins, in connection with a totally unrelated incident involving stolen household goods. (Tr. 393).

Evidence of this alleged admission was introduced into evidence over Defendant, Collins', objection. The

government then proceeded to examine Defendant, Collins, with regard to the other unrelated charges which had previously been brought and dismissed in state court. (Tr. 393-397). Defendant, Collins, registered his objection to the introduction of this evidence. (Tr. 393 and 395).

The evidence was admitted by the trial court, and Defendant, Collins, testified to various allegations of stolen property being located in his house, including a stolen coffee rack, a stolen tea rack, six stolen coffee cups, a stolen potato whipper, and certain alleged stolen musical instruments. (Tr. 396).

Defendant, Collins, was not charged with the theft of these items in the federal case, and, in fact, the charges brought against Defendant, Collins, were dismissed in the state court.

The pertinent testimony relating to the foregoing is specifically recited in Tr. 393 through 397, and the relevant parts are set forth herein, as follows:

"Q. Now, did Chief PRATT tell you, before he asked you any questions, what you were being asked questions about?

A. He said in connection with the house in Wilmington.

Q. That's all he said to you?



A. He was asking me many questions.

MR. CRISPE: Your Honor, I would object to this and I would ask that we approach the Bench a moment.

THE COURT: Very well.

AT THE BENCH, OUT OF HEARING BY THE JURY:

MR. CRISPE: Your Honor, I don't think that it's appropriate in this case to get into any questions concerning some of the facts surrounding the charges, the State charges and I hope that this is not what Mr. Niedermeier is leading up to. And I would ask the Court to caution him with regard to anything that has to do with these state charges which is totally a separate situation and -

THE COURT: Objection is over-ruled. The matter has already been inquired of.

MR. CRISPE: Well, Your Honor, if - \*\*\*

Q. Well, what - I believe Mr. WEBER asked you whether you were questioned, the questions Chief PRATT asked you had anything to do with stolen cars?

A. Yes, he also asked me about the stolen cars, yes, sir.

Q. What else did he ask you about?

MR. CRISPE: Your Honor, I object for the same reasons that I have stated before.

THE COURT: Objection over-ruled. \*\*\*

Q. What other charges did he -

MR. CRISPE: Your Honor, I would ask that you note my objection to this entire line of questioning.

MR. WEBER: I also register my objection, Your Honor, this witness has testified that there were other charges that were dismissed not in this case.

THE COURT: Proceed.

Q. What were these other charges that were dismissed?

A. There was a stone coffee rack and a -

Q. A stolen what?

A. Coffee rack. I mean a -

Q. Coffee what?

A. A dish rack.

Q. A dish rack?

A. A stolen dish rack.

Q. All right, a stolen dish rack, what else?

A. And six coffee cups.

Q. Six coffee cups.

A. And a potato whipper, or something.

Q. A potato whipper, what else?

A. That was all.

Q. Those were the charges that were dismissed?

A. Well, he was asking me, he was asking me about those things there, yes.

Q. Did he ask you about any other things? \*\*\*



Q. It has nothing to do with the charges that were dismissed, had nothing to do with this case, is that right?

A. Well sir, one of the charges was the Cadillac, that was dismissed.

Q. The Cadillac. And did he ask about that?

A. Pardon me, sir?

Q. Did he ask about the Cadillac?

A. Did who ask about the Cadillac?

Q. Were you asked by Chief PRATT about it?

A. Yes, sir.

Q. And you were told that he was interested in that Cadillac?

A. Pardon me, sir?

Q. You were told by Chief PRATT that that was one of the things that he was interested in?

A. Well, I guess he was interested in it.

Q. Because he asked you about it?

A. Well, he asked me about it, I didn't really, you know? \*\*\* "

LAW AND ARGUMENT AS TO ISSUE NUMBER ONE

It is well established law that upon a trial for one offense, evidence of another distinct and unrelated offense, even if committed by the Defendant, is not admissible in a federal conspiracy prosecution. Nearly

every jurisdiction has taken this position, including the Second Circuit. United States vs. Bozza (1966 Ca. 2 N.Y.), 365 F.2d 206.

This rule has been most recently set forth in the new Federal Rules of Evidence. Exceptions do exist, but only upon very strict and proper application. Rule 404(b) would require that any such extrinsic evidence must first be found to be relevant to a material fact in issue. If this criteria cannot be satisfied, then no evidence of other crimes, wrongs, or acts are admissible.

If, however, the other evidence does meet this test, an additional element must appear before the evidence may be admitted. Rule 403 would require that the probative value of such evidence be carefully weighed against its inherent improper prejudicial effect.

Failure to meet these tests, under the new Rules of Evidence, would render evidence of other offenses inadmissible. Rule 404(b) provides:

"Other crimes, wrongs, or acts - evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

No purpose was served the government's case by the introduction of this highly prejudicial evidence.



The government was permitted to inquire into the facts surrounding a charge that had never been proven against Defendant, Collins. For Defendant, Collins, to explain and defend the facts surrounding the state charges involving stolen personal property would have required preparation by the Defendant for the proper presentation of a defense to these allegations and charges. The accused should be entitled to know in advance the charges for which he must defend himself, since without this knowledge, he could not be expected to properly defend himself. A proper rebuttal or defense to the facts brought out by the government concerning this highly prejudicial and unrelated factual situation would have doubled the time of trial, and would have completely prejudiced and confused the jury as to the real issues involved in the case at bar.

When a person is put on trial for an offense, if he is convicted at all, it ought to be by evidence which shows that he is guilty of that offense, and not by evidence which shows his guilt of offenses entirely unrelated to the offense charged. Certainly, this evidence was not admitted by the government to prove motive, nor opportunity, nor preparation, nor plan, nor identity, nor absence of mistake or accident. Likewise, such evidence could not serve in establishing Defendant's intent or knowledge of the theft of stolen automobiles.

The facts concerning the alleged stolen household goods are totally unrelated, and, further, no evidence was introduced that Defendant, Collins, in fact, even knew these household goods were stolen. In Brubaker vs. United States, 183 F.2d 894 (CA. 6), the Circuit Court held that the trial court erred in the trial of Defendant having possession of a stolen car in admitting evidence of two loaded guns found in the car, since the possession of guns in no way showed or proved that the Defendant knew the car was stolen, the court further stating that the evidence had no bearing on a trial for violation of the Dyer Act.

Defendant, Collins', position here is the same. The mere fact that it was alleged that some stolen property was located in the house in which Defendant was living together with other individuals does not establish that, in fact, the goods were stolen, nor does it establish that the Defendant knew the goods were stolen, nor does it establish any of the facts and circumstances surrounding these alleged stolen goods. As demonstrated in the Brubaker case, such evidence is not admissible to show criminal intent or criminal knowledge, as it establishes nothing with regard to Dyer Act violations.

Evidence of other crime is irrelevant where it does not tend to prove some material fact in connection with the crime charged. People vs. Richardson, 222 N.Y. 103, 118 N.E. 514; Huron vs. State, 115 Tex. Crim. 187, 30 S.W.2d 326.



In any event, each case must be carefully examined based upon its own facts and circumstances. Here it is clear the highly prejudicial evidence of the other alleged defenses were in no way relevant to a material fact in issue.

However, assuming this not to be the case, admission of this evidence would, in addition, have to meet the test of Rule 403 of the Federal Rules of Evidence. Rule 403 provides:

"Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time - although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

In other words, the probative value of the evidence must be weighed as against its inherent improper prejudicial effect. Here, clearly, the admission of evidence of the other unrelated offenses permitted the government to exploit areas of little, if any, relevance to Defendant's unfair prejudice.

Likewise, it tended to confuse the issues before the jury to be decided since it had nothing whatsoever to do with the charges before the Federal Court to be decided by the jury. Such evidence was, further, clearly misleading in that the full and complete facts and circum-

stances surrounding the alleged stolen household goods, including whether the property was, in fact, stolen, who stole it, whether Defendant, Collins, had knowledge of it being stolen, could not have been brought out during the course of the trial for Dyer Act violations for the reason that it would have greatly mislead the jury, and would have unduly delayed and wasted the time of the court, having no reference to the charges before the court.

This rule has been widely accepted, and has been adopted by the Second Circuit in United States vs. Papadakis, 510 F.2d 287, which held that if the evidence meets the test of Rule 404(b), it may be admissible, provided that its potential for prejudice does not outweigh its probative value.

To honestly and accurately explain the circumstances of the other alleged defenses would have taken nearly a day, and would have not only been prejudicial, but completely unnecessary.

In Devore vs. United States, 368 F.2d 396 (CA. 9), a case involving a violation of the Dyer Act, it was held that admission of evidence, that prior to the time that Defendants were apprehended in Arizona driving a stolen automobile, and using stolen automobile credit cards, merchandise was purchased in an Alabama store with a charge plate stolen at the same time as the credit cards, and



that Defendants were in possession of such merchandize on the same date, was prejudicial error in that its prejudice was not balanced by substantial gain to the government's case in proving any of the exceptions to Rule 404(b); namely, guilt, knowledge, or intent.

It has widely been held that evidence concerning the commission of crimes other than those charged in the indictment are inadmissible not because such evidence might not be relevant, but because the resulting prejudice would be too great. United States vs. Wiley, 534 F.2d 659.

The determination can only be made by examining the facts in each individual case. Slough and Knightly, Other Vices, Other Crimes, 41 Iowa L. Rev. 325.

It is Defendant's contention that the trial court erred in the admission of this evidence in the case at bar.

A trial judge should, in the exercise of sound discretion, exclude evidence tending to show the commission of other crime "where the minute peg of relevancy will be entirely obscured by the dirty linen hung upon it." State vs. Goubel, 36 Wash.2d 367, 218 P.2d 300, 306 cited in McCormick, Evidence 1954 (333 fn. 28).

When a person is put on trial for one offense, if he is to be convicted at all, it ought to be by evidence

which shows that he is guilty of that offense, and not by prejudicial evidence which shows that he may be guilty of some entirely unrelated offense.

Based upon all of the facts and circumstances surrounding the admission into evidence of the prejudicial discussion of the unrelated, unfounded, and dismissed grand larceny charges, it is clear that the evidence was improperly admitted.

STATEMENT OF FACTS RELEVANT  
TO ISSUE NUMBER TWO

Upon conviction of Defendant, Collins, on all four counts of the indictment, Defendant, Collins, moved for judgment of acquittal and for new trial on the basis that sufficient evidence did not exist for his conviction, even when taken in the light most favorable to the government's position, and disregarding all contrary and favorable evidence to Defendant, Collins.

Count I of the indictment alleges that Defendant, Collins, did unlawfully, wrongfully, and knowingly transport in interstate commerce from Massachusetts to Vermont a 1963 motor vehicle knowing the same to be stolen.



No evidence was introduced by the government tending to support either Count I, Count V, or Count VI, other than through government witness, George Fitch, who was an admitted car thief and participant in the Dyer Act violation before the court. His testimony, however, did not, nor did anyone else's testimony, implicate Defendant, Collins, in a violation of Count I of the indictment. In fact, the only reference to Defendant, Collins, may be found at Tr. 112 where he indicates that Mr. Collins became aware that it was a stolen vehicle.

It is well established law that mere knowledge of possession of the stolen motor vehicle by someone else is not adequate for conviction under the Dyer Act. Mr. Fitch's testimony with regard to Count I, which relates to the 1963 Cadillac, does, at no other instance, implicate in any way Defendant, Collins. The only other references made to Defendant, Collins, may be found at Tr. 124 and 125, where Mr. Fitch testified that Mr. Collins and Mr. Peters drove him to Boston, and later returned to Vermont in another vehicle, at which time Mr. Fitch was driving the stolen Cadillac which is the subject of Count I.

No where in the evidence does it disclose that Mr. Collins himself performed any affirmative act to aid or assist Mr. Fitch in the commission of his crime. No

where in Mr. Fitch's testimony does it indicate whether Mr. Collins was a passenger or the driver of a vehicle which took them to Boston, and brought them back to Vermont, which the evidence discloses was not a stolen vehicle.

With regard to Count V, Defendant, Collins, is charged with unlawfully and knowingly transporting in interstate commerce from Massachusetts to Vermont a 1966 Austin-Healy motor vehicle, knowing the same to be stolen. Again, the evidence was not sufficient to allow the jury to conclude that Defendant, Collins, was guilty of Count V beyond a reasonable doubt, the only evidence admitted against him being, again, by admitted participant, Mr. Fitch. Tr. 117 expressly demonstrates that Mr. Collins was not even present when the car was stolen. It does indicate that Mr. Collins was aware that it had been stolen, but, again, this is not sufficient to justify conviction of Count V.

Likewise, at Tr. 127, Mr. Fitch testified that Mr. Collins and Mr. Peters drove him to Boston, at which time he picked up the 1966 Austin-Healy, which is the subject of Count V. No other evidence, even when taken in the light most favorably to the government, can be found in the entire transcript implicating Defendant,



Collins, to Counts I and V. In fact, substantial evidence exists refuting Mr. Fitch's testimony.

Following trial, Defendant, Collins, moved for Judgment of Acquittal and for New Trial on the basis that the evidence was not sufficient to allow the jury to conclude that the Defendant was guilty of the offenses charged, beyond a reasonable doubt.

LAW AND ARGUMENT AS TO ISSUE NUMBER TWO

It has been held that evidence is not sufficient to establish a felonious taking or intent to deprive where it would be equally logical and consistent to infer some other purpose, and in the case of Lewis vs. United States, 420 F.2d 1089 (CA. 10), the Court held that it would be equally logical and consistent to infer that the garage mechanic charged either formed an intent to steal the car, proceeded to take the car across the state border, or that he began a legitimate road test of the car.

The facts in the case at bar are similar to those set forth in the Lewis case. Mr. Fitch testified that Edward Collins and Michael Peters drove him to Boston to

pick up a car which was identified as a stolen motor vehicle. Mr. Fitch readily admits in his testimony, Tr. 124, that, in fact, Mr. Collins and Mr. Peters had other reasons for going to Boston, including taking care of other business at the time he picked up the 1963 Cadillac, which is the subject of the conviction in Count I.

Likewise, Mr. Fitch readily admits in his testimony, Tr. 127, that Defendant, Collins, and Mr. Peters had other business to attend to on the occasion of Mr. Fitch going to Boston to pick up the 1966 Austin-Healy, which was the subject of Count V. Where it would be equally logical and consistent to infer that Mr. Collins went to Boston for the purpose of attending to his other business, the evidence is not sufficient to sustain a conviction.

Again, this is taking the testimony in the light most favorable to the government in that other evidence was introduced to indicate that, in fact, Mr. Collins never went to Boston with Mr. Fitch, but did go down upon occasion because of his mother's failing health.

In Fitzpatrick vs. United States, (CA. 5) 410 F.2d 513, the Court held that evidence that Defendants rode in a stolen automobile from one state to another, and that they were in the automobile when it was wrecked, and that they fled the police officer who found the wreck was insufficient to establish that the Defendant



had dominion or control over the automobile sufficient to support a conviction under the Dyer Act.

No where in the transcript is there such evidence of affirmative participation of Defendant, Collins, in any of the four Counts for which he was convicted.

In order to be an aider or abettor, the government must show that the Defendant associated himself with the venture in some fashion, that he participated in it as something he wished to bring about, or that he sought by his actions to make it succeed. United States vs. Johnson, (1975 CA. 2 Vt.) 513 F.2d 819.

There is no evidence that Defendant, Collins, aided or associated himself with the theft that is the subject of Count I, or which is the subject of Count V, nor that he in any way participated in it as something he wished to bring about. Absence of evidence of purposeful behavior, mere presence at the scene of a crime, even when coupled with knowledge that the crime is being committed, is insufficient to prove aiding or abetting or membership in a conspiracy. United States vs. Johnson (195 CA. 2 Vt.) 513 F.2d 819.

Mr. Fitch testified that Mr. Collins was present when Mr. Fitch went to Boston to pick up the stolen vehicle, and that when he returned to Vermont, Mr. Collins

returned with him in another vehicle. This clearly is inadequate for conviction under the rule of law as set forth in United States vs. Johnson, Supra.

Mere presence, even when coupled with knowledge, is insufficient to warrant conviction. The Johnson case held that evidence which did not show that Defendant had any stake in importing drugs from Canada (there was absolutely no evidence in the case at bar that Defendant, Collins, had any stake in the theft of the automobiles which are the subject of Counts I and IV), or that the Defendant had any connection with the acquisition, concealment, importation, use, and sale of the drugs (in the case at bar there is absolutely no evidence that Defendant, Collins, had any active participation in connection with the allegations set forth in Count I and Count IV) was insufficient to sustain a conviction of conspiracy and importation of methamphetamines, notwithstanding Defendant's presence in the automobile at the time the drugs were found and his close association and participation with the driver of the automobile.

To establish that the Defendant, Collins, aided or abetted in the commission of the charge brought against him, the government must show beyond a reasonable doubt that the Defendant, Collins, had "a purposeful attitude", and in some manner participated in the unlawful deed.



The mere showing that he rode in another car from Massachusetts to Vermont at the same time that the stolen car was being transported is hardly a purposeful act of aiding or abetting for which he could be found guilty beyond a reasonable doubt.

Count VI of the indictment charges Defendant, Collins, and others with knowingly conspiring to commit the offenses; namely, violations of the Dyer Act. But, in order to fasten the guilt on one accused of being a co-conspirator, it is necessary to prove that he actively participated in the conspiracy charged; mere association with conspirators is not enough to establish the requisite participation in conspiracy. United States vs. Mendy, (1974 CA. 5 Tex.) 496 F.2d 128; United States vs. Menchino, (1974 CA. 5) 497 F.2d 935; United States vs. Sanchez, (1975 CA. 5 Tex.) 508 F.2d 388.

In addition to the law and argument set forth herein, Defendant, Collins, would also adopt the law and argument set forth in the Brief of Defendant, Michael J. Peters, filed with the Circuit Court of Appeals for the Second Circuit on even date herewith.

CONCLUSION

The judgment of the District Court should be reversed, and judgment of acquittal entered for the Defendant, or, in the alternative, remanded for new trial.

Dated at Brattleboro, Vermont, this 30th day of June, 1977.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lawrin P. Crispe", written over a horizontal line.

Lawrin P. Crispe, Esquire  
Attorney for Defendant-Appellant,  
Edward Collins



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, APPELLEE :  
vs. : Docket No. 77-1235  
EDWARD COLLINS, APPELLANT :

CERTIFICATE OF SERVICE

I, Lawrin P. Crispe, Esquire, Attorney for Defendant-Appellant, Edward Collins, hereby certify that I served a copy of the foregoing Brief for the Appellant upon the Plaintiff-Appellee, by sending a copy of same, first class mail, postage prepaid, addressed to Jerome J. Niedermeier, Esquire, Assistant United States Attorney, United States Department of Justice, Rutland, Vermont.

  
\_\_\_\_\_  
Lawrin P. Crispe, Esquire